IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO. 394 OF 1982

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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MANJULABEN,
WD/O. HASMUKHLAL RATILAL SHAH & ORS. - Appellant(s)
Versus
NUR MOHMMAD ISMAIL GHANCHI & ORS. - Respondent(s)

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Appearance :
Shri Zubin Bharda for Appellant(s) : 1 - 8.
Ms. Archana Acharya for Respondent(s) : 3.
None for other Respondent(s).

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 22/08/2007

ORAL JUDGMENT

1. Shri Zubin Bharda, learned Counsel for the appellants. The

respondent Nos.1 and 2 are served, but, nobody appears for them. The respondent No.3 is represented by Ms. Archana Acharya. None for respondent No.4 though the name of Shri Arun H. Mehta, Advocate, is shown in the Daily Cause List.

The learned Counsel for the appellants submits that he is not claiming any relief against respondent No.5, therefore, notice be dispensed with. It is, accordingly, ordered.

2. The appellants-claimants, being aggrieved by the award dated 22nd July, 1981 passed by the learned Motor Accident Claims Tribunal (Main), Surat in M.A.C.P. No.43 of 1979, are before this Court with a submission that the learned Tribunal below erred in exonerating the Insurance Company, namely, The New India Insurance Company Limited – respondent No.3 and also erred in awarding less amount despite proof of the fact that the income of the deceased could be Rs.15,000/- per year.

3. Shri Zubin Bharda, learned Counsel for the appellants, placing reliance upon a judgement of the Apex Court in the matter of ***United India Insurance Co. Ltd., Shimla vs. Tilak Singh & Ors.***, [***AIR 2006 SC 1576***], submitted that during currency of the insurance policy, if the vehicle is transferred and no intimation of the transfer is given to the Insurance Company, then too, the Insurance Company cannot be

absolved of its liability.

4. After taking me through the evidence and the findings recorded by the learned Tribunal below, he contended that the learned Tribunal below was unjustified in holding that the income of the deceased could be Rs.12,000/- per year and the learned Tribunal below also erred in holding that in a case like the present, 1/3rd of the earning of the deceased has to be spared towards the personal expenses of the deceased. He submits that present is a case where the deceased was survived by widow mother, widow and four minor children. According to him, the learned Tribunal below should not have deducted 1/3rd from the earnings towards the personal expenses of the deceased.

5. Ms. Archana Acharya, learned Counsel for the respondent-Insurance Company, though submitted that in absence of the intimation to the Insurance Company and in absence of the positive proof that the vehicle was insured with the respondent–The New India Assurance Company Limited, the learned Tribunal was justified in exonerating the Insurance Company. She also submitted that from the assessment orders/income tax returns, it would appear that the income of the deceased was Rs.10,252/- and under the circumstances, the learned Tribunal below was justified in holding the yearly income to be Rs.12,000/-. She also submitted that the general rule is to deduct 1/3rd

of the earnings towards personal expenses of the deceased and under the circumstances, the learned Tribunal was not unjustified in making the deduction to the extent of 1/3rd.

6. In the matter of the ***United India Insurance Company Limited vs. Tilak Singh & Ors.*** (*supra*), the Supreme Court, after considering the entire law on the subject of the liability of the Insurance Company, has held as under:

> *"S. 6(c) of the General Clauses Act would hardly have any application to a cause of action in favour of a person who was nether a transferor, nor the transferee of the insured vehicle. At the most, the failure to give an intimation under S. 103-A of the 1939 Act would create a liability on that part of the transferor vis-a-vis the insurance company, but would hardly affect a third party's claim for compensation. The situation in law which arises from the failure of the transferor to notify the insurer of the fact of transfer of ownership of the insured vehicle is no different, whether under S. 103-A of the 1939 Act or under S. 157 of the 1988 Act insofar as the liability towards a third party is concerned. Thus, whether the old Act applies or the new Act applies, as far as the deceased third party is concerned, the result would not be different."*

Under the circumstances, I must hold that the Insurance Company would be answerable to the claim made by the claimants and would be liable to satisfy the award.

7. So far as the earnings and deduction from the earnings are concerned, I must hold that the learned Tribunal below was unjustified, in the special set of facts, in making the deduction of 1/3rd of the earnings of the deceased towards his personal expenses. When as many as six persons are dependent upon the bread-winner, by no stretch of imagination, it can be held that the deceased would be spending 1/3rd for his own self and would be leaving hardly 2/3rd for six members of the family. In the present case, I would hold that the personal expenses of the deceased would be only Rs.2,000/- and the family would be entitled to Rs.10,000/-. The learned Tribunal below erred in holding the dependency figure to be Rs.8,000/-. I, accordingly, hold the dependency figure to be Rs.10,000/-. Applying the multiplier of 15 (fifteen) to the additional amount, I hold that the claimants would be entitled to a sum of Rs.30,000/- in addition to what has already been awarded in their favour. The respondents, transferee-owner and the Insurance Company, would be jointly and severally liable to pay the said amount of Rs.30,000/- with 6% interest on the same from the date of the claim petition till realisation.

8. The appeal to the extent indicated above is allowed. No costs.

[R.S.Garg, J.]

*kamlesh**